

Remarks

The above-captioned application has been carefully reviewed in light of the non-final Office Action to which this Amendment is directed. Claims 1, 8-10, and 13-17 remain as pending in this application. Claims 9-10 have been deemed allowable over the prior art of record. Claims 1, 8 and 13 stand rejected under 35 U.S.C. §102(b). Claims 1, 8 and 13-17 stand rejected under 35 U.S.C. §103(a). Claim 1 has been amended in an effort to further clarify and particularly point out the recited carrier. Applicant herein respectfully requests reconsideration based on amended Claim 1, as well as the following remarks.

1. Claim Rejections – 35 U.S.C § 102

The Examiner has rejected Claims 1, 8 and 13 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,951,716 to Lucia, III et al. (hereinafter “Lucia”). Applicant respectfully traverses this rejection. In order to successfully anticipate under the Statute, each and every claimed limitation must be found in the single cited reference. Those limitations that are not found in the cited reference must be notoriously well known to one of sufficient (i.e., ordinary) skill in the field of the invention.

The Examiner has asserted that Lucia teaches a carrier for retaining an oxygen bottle comprising both a flexible open-top container, including a peripheral mouth portion having an internal rigid plastic peripheral section, as well as a flexible upper bottle retaining portion disposed above the peripheral mouth portion. (see Office Action, 03/27/2007, p., ¶2). In Lucia, a flexible bag is disclosed; the bag being necessarily supple for enclosing fabrics and tumbling in a clothes dryer and including a flexible seal at a margin of an opening thereof. (Lucia, col 3, lines 47-60; col 5, lines 34-35). The structure of this flexible bag and seal may include *flexible* rings to hold the *body* of the bag open in a fixed position. (Lucia, col 5, lines 8-35, emphasis added). Applicant respectfully submits that the teachings of Lucia differ significantly from that of the present invention.

More particularly, amended independent Claim 1 recites as follows:

1. (Currently Amended) A carrier for retaining an oxygen bottle, said carrier comprising:

a flexible open-top container adapted for maintaining a close fitting relationship with an oxygen bottle, said container including:

a peripheral mouth portion including an internal rigid plastic peripheral section that maintains a predetermined shape and size and provides stiffness to said mouth portion and wherein said mouth section is sized to permit ingress of an oxygen bottle, thereby enabling an oxygen bottle to be loaded therein vertically, and a flexible upper bottle retaining portion adapted for preventing a retained oxygen bottle from falling out of said carrier.

Applicant respectfully asserts that the carrier as claimed in independent Claim 1 requires a flexible open-top container adapted for maintaining a close fitting relationship with an oxygen bottle. Though the container is highly flexible, an oxygen bottle can be loaded vertically therein by way of the structurally rigid peripheral mouth portion as it corresponds to the size and shape of the oxygen bottle. The peripheral mouth portion maintains a predetermined shape and has adequate stiffness to easily slide an oxygen bottle into a snug position within the bag (p.4, lines 30-31, p.5, lines 1-4). Furthermore, the open-top container prevents a retained oxygen bottle from falling out of the carrier by way of the “flexible upper bottle retaining portion” which is disposed above the rigid peripheral mouth portion, the retaining portion having a drawstring or other means to secure the oxygen bottle as it is accommodated in the bag (p.7-8, ¶28). Claim 1 has now been amended to clarify the vertical accommodation of the oxygen bottle into the bag. Support is found for the foregoing amendment in Figs. 1, 4, 5 of the present application (See also p. 6-7, ¶24-27). Therefore, it is believed that no new matter has been added.

Applicant believes that the Examiner has not met her burden in proving that Lucia recites all of the features of independent Claim 1. Lucia fails to include an open-top container “including a peripheral mouth portion including an internal rigid plastic peripheral section that maintains a predetermined shape and size” to “enable an oxygen bottle to be loaded therein vertically.” The openings that Lucia teaches are not upper or top openings to place and secure an oxygen bottle, nor would the openings of Lucia allow this secure placement. Moreover, Lucia does not mention vertical placement through a top opening, nor does Lucia teach or suggest that the container can conform to the dimensions of objects being placed therein. Moreover, the flexible supporting rings of Lucia are merely used for holding

the shape of the bag and are not included in a peripheral mouth portion. Since Lucia does not include the limitations referenced above, it cannot anticipate Claim 1 under the Statute. Therefore, Applicant respectfully submits that amended independent Claim 1, and its dependent Claims 8 and 13, are patentable over Lucia.

While Applicant herein may have highlighted a particular claim element of a claim for purposes of demonstrating an insufficiency of an examination on the part of an Examiner, Applicant's highlighting of a particular claim element for such purpose should not be taken to indicate that the Applicant has taken the position that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present.

2. Claim Rejections – 35 U.S.C § 103

The Examiner has rejected Claims 1, 8, and 13-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,288,001 to Locarno ("Locarno") in view of Conte '531 and Lucia '716.

In order to establish a *prima facie* case of obviousness, "there must be some [reason], either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings"; furthermore, the reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143; See *KSR v. Teleflex*, 127 S.Ct. 1727 (2007). The Examiner asserts that Locarno in combination with Conte teaches an elongated carrier capable of retaining a close fitting relationship with an oxygen bottle and including an upper peripheral mouth portion to provide enough stiffness for permitting ingress of an oxygen bottle and capable of retaining the oxygen bottle without falling out of the carrier (See Office Action, 03/27/2007, p.3, ¶3). Applicant respectfully submits that the teachings of Locarno, taken either alone or in combination, neither teach or suggest the claimed "upper mouth portion having a plastic peripheral section to enable an oxygen bottle to be loaded therein vertically" as stated in independent Claim 1. The Examiner has already acknowledged that Locarno does not teach the upper mouth portion, including a rigid plastic peripheral portion allowing an oxygen bottle to be loaded vertically therein. (See Office Action, p.4, lines 8-10). Conte does not

satisfy this limitation; instead, Conte teaches a pocket system with attaching straps. Conte does not teach or remotely suggest a peripherally reinforced mouth section.

In Lucia, a flexible containment bag is disclosed, including an opening having a flexible seal, necessarily suitable for tumbling in a clothes dryer. (Lucia, col 3, lines 47-60; col 5, lines 34-35). The structure of this flexible bag may include a pair of flexible rings (7) (8) to hold the shape of the body of the bag. (Lucia, col 5, lines 8-35). Applicant respectfully asserts that Lucia does not teach, suggest or otherwise mention the particularly recited claimed features; that is, neither an "open-top container adapted for maintaining a close fitting relationship with an oxygen bottle" nor "an upper mouth portion having a plastic peripheral section to enable an oxygen bottle to be loaded therein vertically" as stated in amended independent Claim 1. The peripheral section maintains a predetermined shape at the port of the mouth and has adequate stiffness to easily slide an oxygen bottle into a snug position within the bag. (p.4, lines 30-31, p.5, lines 1-4). Further, Lucia does not teach or suggest the vertical placement of an oxygen bottle through a top opening and does not even mention that the container conform to the dimensions of an oxygen bottle being placed therein.

Applicant, therefore, respectfully asserts that Locarno, taken either alone or taken in combination with Conte and Lucia, fails to teach these limitations, thus failing to meet the Examiner's burden in order to successfully maintain a prima facie showing of obviousness under 35 U.S.C. §103. Locarno does not teach or suggest an upper mouth portion, including a plastic reinforcement portion to enable an oxygen bottle to be loaded therein vertically." Neither Conte or Lucia meet this deficiency.

Applicant further asserts that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." MPEP 2143. To that end, it is not believed that one of ordinary skill in the art would be motivated to combine the reference teachings of a dry cleaner bag, which demands loose flexibility, with the teachings of a structurally supportive bag placed vertically for retaining an explosive and unstable oxygen bottle, absent hindsight. Therefore, Applicant respectfully submits that independent

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Claim 1, as well as its dependent claims 8 and 13, are patentable over Locarno, taken either alone or in combination with Conte or Lucia.

3. Allowable Subject Matter

Applicant gratefully acknowledges the Examiner's allowance of Claims 9-10 as patentable over the prior art of record.

4. Conclusion

In summary and in view of the above amendments and remarks, Applicant believes all of the claims of the present application to be in condition for allowance and an expedited Notice of Allowability is earnestly solicited.

If the Examiner wishes to expedite disposition of the above-captioned patent application, she is invited to contact Applicant's representative at the telephone number below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0289, under Order No. 998_001CIP from which the undersigned is authorized to draw.

Respectfully submitted,
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